

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ORANGEBURG DIVISION**

Manning & Sons Trucking & Utilities, LLC )  
and Keven Manning, *Individually*, )

Plaintiffs, )

v. )

McCarthy Improvement Company, )

Defendant. )

Civil Action No.: 5:17-cv-01994-JMC

**ORDER AND OPINION**

\_\_\_\_\_  
McCarthy Improvement Company, )

Counter-Plaintiff, )

v. )

Manning & Sons Trucking & Utilities, LLC )  
and SouthStar Capital, LLC )

Counter-Defendants. )

This matter is before the court pursuant to Defendant’s Motion to Consolidate (ECF No. 43) and Plaintiffs’ Motion to Consolidate and Motion for a Status Conference (ECF No. 45).<sup>1</sup> The parties move the court to consolidate this case with a separate case in which they are also parties, *McCarthy Improvement Co. v. Manning & Sons Trucking & Utilities, LLC, et al.*, Civil Action No. 2:17-cv-03290-JMC. For the reasons stated below, the court **GRANTS** Defendant’s Motion to Consolidate (ECF No. 43) and Plaintiffs’ Motion to Consolidate (ECF No. 45).<sup>2</sup>

<sup>1</sup> Plaintiffs and McCarthy Improvement Company (“McCarthy”) filed respective Motions to Consolidate in *McCarthy Improvement Co.*, Civil Action No. 2:17-cv-03290, ECF Nos. 47, 48.

<sup>2</sup> The court **GRANTS** Plaintiffs’ Motion for a Status Conference (ECF No. 45) and has scheduled a status conference for June 7, 2018.

The court may consolidate multiple pending actions involving “common question[s] of law or fact” into one action in the interest of efficiency. Fed. R. Civ. P. 42(a)(2). “District courts enjoy substantial discretion in deciding whether and to what extent to consolidate cases.” *Hall v. Hall*, 138 S. Ct. 1118, 1131 (2018).

There are common questions of fact in both cases as both cases arise from the parties’ participation in a construction project in Orangeburg County, South Carolina. (ECF Nos. 43 at 2; 45 at 2.) There are also common questions of law in both cases. Plaintiffs bring several causes of action against Defendant including, fraud; Defendant’s violation of the S.C. Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 et seq. (1971); negligence and negligent misrepresentation; defamation and slander; Defendant’s violation of Title VI of the Civil Rights Act of 1964; and abuse of process and malicious prosecution. (*See* ECF No. 1-1.) Defendant counterclaimed for breach of contract and/or mistake against Plaintiffs or in the alternative for unjust enrichment against just Manning & Sons Trucking & Utilities, LLC. (ECF No. 24 at 1-3.) Defendant also counterclaimed against SouthStar Capital, LLC (“SouthStar”) for unjust enrichment and/or mistake. (*Id.* at 3-5.)

In the other case, Defendant filed a declaratory judgment action against Plaintiffs and SouthStar, seeking the following declarations: the parties’ obligations under the subcontract, whether Plaintiffs and SouthStar have any common law, statutory, or regulatory claim against Defendant, that Defendant does not owe Plaintiffs or SouthStar any further sums of money, and that Plaintiffs and SouthStar were unjustly enriched and therefore, must refund McCarthy. First Amended Petition for Declaratory Judgment, *McCarthy Improvement Co.*, Civil Action No. 2:17-cv-03290, ECF No. 1-1 at 174-81.

Upon review of the facts and law in each case, the court finds that there are common questions of law and fact within each case and that judicial efficiency is best served by consolidating the two cases. Accordingly, the court **GRANTS** the parties respective Motions to Consolidate. (ECF Nos. 43, 45.) The cases are consolidated for both pretrial purposes and for trial purposes unless otherwise ordered by the court.

**IT IS SO ORDERED.**

A handwritten signature in black ink that reads "J. Michelle Childs". The signature is written in a cursive, flowing style.

United States District Judge

June 6, 2018  
Columbia, South Carolina